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May 16, 1996

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: CC Docket No. 96-98, Interconnection

Attached are copies of articles from the Telecommunications Policy Review that I sent to Chairman Hundt and Commissioners Quello, Ness and Chong. Please associate them with the file in the above docket.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan Ciamporcero (JJB)

cc: Chairman Hundt
Commissioner Quello
Commissioner Ness
Commissioner Chong

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TELECOMMUNICATIONS POLICY REVIEW
Washington, D.C.

Volume 12, Number 18 Our 581st Weekly Issue April 28, 1996

In this Issue:

* "Interfering With the Essential Work of the Hospital," Supp. II: The FCC's "Interconnection Order." Have we embarked on a new era of smaller Government and creative Federalism? See pages 1 to 5.

* The Onassis Auction. The "Cameloot" proceeding in New York is discussed. See pages 5 to 7.

* And, Now, Commercials Via Digital TV. An important new broadcasting development's noted. See pages 7 and 8.

* Short Items. Better trade numbers, better deficit numbers, plus some funnies. See pages 8 and 9.

* TPR's Weekly General Press Review. General developments, telecommunications developments, and how well newspapers and broadcasters covered them. See pages 9 to 12.

* TPR's Whitewatergate Watch. The past week's events on the corruption, moral bankruptcy, and political shenanigans front -- both here and abroad -- are noted. See pages 12 to 14.

* TPR's Weekly Movie Review. Mulholland Falls (88) is discussed. See page 14.

* Things Worth Remembering. Corporate governance is the topic. See pages 14 and 15.

* * *

Special Review Memorandum

Re: "Interfering With the Essential Work of the Hospital," Supp. II: The FCC's Recent "Interconnection Order."

Foreword

As many readers surely will know, the Federal Communications Commission (FCC) on Friday, April 19, released a long "notice of proposed rulemaking," ostensibly to implement three important parts of the new communications law (P.L. 104-104) -- namely, those provisions relating to local telephone network interconnection and the possible, future competitive entry by Bell companies into long-distance markets (Common Carrier Docket No. 96-98). As codified, the relevant parts of this particular statute -- which is quite detailed, as these things go -- span slightly less than 15 small, "slip law"-sized pages (110 Stat. 61-70, 86-92). Undeterred, the FCC document's an impressive 99 standard-sized pages long, single-spaced, complete with 386 footnotes. (No, we haven't done a word count, but expect there's a fantastic "exchange ratio" here.)[1]

What's One's Overall First Impression?

Now, over the next few weeks, countless law firm memos, articles, and other writings no doubt will be issued, meticulously analyzing each word and phrase of this latest regulatory magnum opus. Myriad "leaf people" both within and outside Government will set busily to work. But in case you're inclined to be a "tree" or a "forest" type, and really don't want to steep endlessly in this tiresome telephone regulatory lore, perhaps some "high-policy" comments are warranted.

For instance, what's your average reader's overall first impression of the document going to be? And, can one reasonably project from that first impression and draw plausible conclusions about how all of this will turn out? Well, certainly it's sometimes risky and occasionally unfair to finger your FCC based solely on the contents of its various notices. The traditional "kitchen sink" approach, the sometimes inartful pasting together of sections keystroked by various agency groups, and the apparent inability to write more than seven words without invoking the institutional "we" don't always project a favorable impression. By the same token, don't worry: FCC notices don't necessarily indicate accurately what the agency will do in the end.

They'll Mess It All Up

But if there's a single dominant message conveyed by this latest massive undertaking, it is that the FCC staff seem convinced the state agencies and private sector companies, left unregulated and unguided, will just hopelessly foul things up. In short, anyone who harbors the delusion that the spirit of regulatory imperialism's dead -- or America's somehow exited the "age of 'Big Government'" -- ought to skim this particular FCC notice.

That's not to say the approach is illogical. If one assumes the state agencies are uniformly incompetent (or manipulable) and the industry's hopelessly venal, it's then necessary, isn't it, for the Federal agency to propose near-total preemption of state authorities, correct? Too, if one assumes traditional antitrust standards and sanctions governing access are irrelevant, one had better do something, right? Thus, one must define "good faith," for example, and meticulously set forth the precise costing and pricing standards those rubes in the provinces will use. The Wall Street Journal editorially has assailed the current FCC leadership for too often taking a "French bureaucrats approach" toward cable television regulation. Well, this notice ought to make those Journal folks happy, for it amply embodies the dirigism philosophy, carried to its logical extreme.

Consequently, as one reader quipped, virtually the only independent power left to the state commissions will be the right substantially to increase local residential phone rates.

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[1] In Fairness, it pales beside the 1,000 pages which the Federal Energy Regulatory Commission (FERC) almost contemporaneously released on the interconnection of electric power systems to facilitate competition.

This proposed, sweeping preemption, moreover, generates a series of not-always-mellifluous message harmonics.

The "Cuckoo's Nest" Harmonic

One of those possible harmonics is the implication that, here, the "inmates may well be in charge of the asylum," at least for the time being. In general, you see, FCC Commissioners themselves don't search for more missions, nor do they necessarily relish needless complexity, confrontation, and intrusion. Back in 1976, for instance, after the FCC's Common Carrier Bureau was twice rolled by MCI in the celebrated "Execunet" appeals, and the FCC staff was directed to come up with an MCI "deregulation" program, it devised a proposal only slightly less complicated than the approach at issue here. "I had no idea that deregulation was so complicated," one of the frustrated Commissioners exclaimed, but to little avail, of course, as the staff continued to rattle off an endless series of rules, forms, reporting requirements, and the like which would have to be altered. The staff's purpose there was to project an aura of institutional omnicompetence, you see, and to imply that even the most modest change in their "delicately balanced," regulatory Alhambra was roughly as responsible as thrusting one's digit into the workings of a fine watch. "You just can't be too careful" is nearly always the prime regulatory watchword. And, it typically works.

Well, be assured: the wheels at the FCC are quite capable of grinding very finely. Any agency which can get interested in whether nonmetallic aerial plant lasts seven years in Arkansas but nine in Missouri has an eye for precision, be assured. Hence, here, the agency staff's ostensibly proposing such things as developing rules, regulations, and guidelines even to control the standards employed by the "arbitrators" mentioned in the recent act -- in effect, dictating how state commission hearing examiners will do business! In short, virtually no detail seems too small or remote but that the FCC staff don't "tentatively conclude" they must totally control it.

But an ordinary -- or, even extraordinary -- FCC Commissioner reading this near-endless mass of proposed rules would likely react much as his or her frustrated predecessor did 20 years ago. That is, he or she would ask, "Gee, do we really have to do all this?" Or, "Isn't there something simpler?" Or, "Why are we getting into this?" One can thus reasonably conclude -- from the fact all of these proposals actually surfaced publicly -- that the document just wasn't subject to the usual intense Commissioner scrutiny.

The "Corleone Family Christening" Phenomenon

Another of the clashing message harmonics the draft FCC notice potentially generates in some quarters might be called the "Corleone Family Christening Phenomenon," i.e., <u>now</u> we're <u>really</u> going to settle old scores. The legislation, you see, wasn't the FCC's doing and, indeed, in many regards Congress not only ignored their views, but they weren't even solicited. The Clinton Administration at various points huffed-and-puffed and threatened to blow the whole legislative house down. In the final analysis, however, the bill was hammered out by Congress and the regulated companies, with Federal regulators only tangentially involved. The words and phrases employed are almost always those of Congress, not the FCC.

Well, remember that famous James Cagney line in <u>Mister Roberts</u>? "AAlll-right, who did it?" Throughout the notice one sees language which seems to say, in essence, that Congress might have thought they were writing the FCC out of the process, but they can't, because we've discovered this other, interconnected phrase that still lets us take over. It's also pretty clear from reading the notice which group of service suppliers the agency staff doesn't like -- namely, the local phone companies, which are presumably blamed for having precipitated this whole situation, and thus "interfered with the essential work of the hospital."

The document's also classical Washington rents-seeking or, more accurately, rents-allocative in tone. The word "consumer," or "customer" virtually never appears. For the focus isn't on them, it's rather on accommodating the needs and interests of the various corporate players, and doing so in a way which is almost entirely aimed at penalizing or punishing the local exchange companies which represent 85 percent of total industry

capitalization. What the FCC also seems to be saying is that they subsidized the growth of long-distance competition, by manipulating ENFIA and other access charges, and now they're going to subsidize the growth of local competition, too, using those same quiet regulatory booster techniques.

The "Federal Branch Office" Approach

Madam Justice O'Connor -- like other Supreme Court Justices, a former state government official -- once commented sharply in an opinion that the Constitution did not convert state governments into branch offices of the Washington bureaucracy. That pro-"Federalism" sentiment, of course, has been increasingly reflected in a series of Court actions recently.

But, don't worry: If there are any Federalists skulking about, they're probably nowhere near 1919 M Street, N.W. and the FCC. For we were, quite literally, unable to find a single task associated with introducing more competition into local and long-distance markets which the FCC was prepared to entrust to the states altogether. All rules and regulations, even "guidelines," will be Federal -- which is rationalized as necessary to ensure a truly national communications system compatible with the law's goals. (Perhaps, in Fairness, the agency wanted to avoid triggering the new "unfunded mandates" law by just taking over all chores.)

Squabbling Over the Corpus

In "public choice economics" terms, what one may have here is a possible battle between the Federal and state regulatory bureaucracies. AT&T having been "streamlined" and spectrum "flexibility" and other reforms having been instituted, the Federal communications regulatory bureaucracy may perceive something happening -- that is, they're potentially running out of justifications for steadily increasing appropriations. At the state level, moreover, open entry laws and the adoption of "price caps" regulation have thrust a wooden stake into the meat-and-potatoes of traditional regulation -- the never-ending rate case. So thousands of state regulators, too, are searching for a mission.

The new legislation potentially engendered just such a mission -- although it's unclear Congress really intended (or appreciated) that bureaucratically felicitous possibility. The issue thus becomes which bureaucracy -- state or Federal -- will be able to capitalize most on this funding opportunity. And, what the FCC's draft notice suggests is they think they've got it all now.

The "Confound Mine Enemies" Approach

Telling a Democratic FCC to be leery of Federalism is an easy enough pitch, of course. Not only has the FCC perennially distrusted anyone whose first name is "state," but there are also 33 Republican Governors today, right? Devolution, therefore, has an obvious political dimension, correct? A more curious aspect of the FCC's draft notice, however, is one almost -- in its extreme Washington-centrism -- can detect a possible industry trick.

Cynics would remind us that getting state and FCC bureaucrats squabbling with each other can be a good thing, depending on one's perspective. After all, it maximizes the potential for time-consuming appeals, right? So, too, do proposed "solutions" which tread close to the "takings" line, if they don't cross that line altogether. And, it's not simply to get a cost-break, remember, that the long-distance companies, like the children in Oliver! keep pressuring the FCC and state commissions to give them more and more. For the more extreme the regulatory solution, they certainly appreciate, the more likely local phone companies and others will appeal to the courts.

The way the new law works, you see, Bell companies must traverse the sections 251 and 252 hurdles before they're eligible for the putative goodies dispensed under section 271 -- namely, entry into long-distance. The longer the long-distance companies can hold them up at the first stage, therefore, the less likely it is they'll encounter more competition in their own market, right?

Now, ask yourself: What do you think MCI management is most interested in? Keeping the Bell companies out of a long-distance market that reliably yields 50 percent or higher price-to-average cost margins? Or, gaining the opportunity to compete in a local exchange market where the price-to-average cost margins are between 15 and 20 percent? What do you think? Think they're going to incur opportunity costs on each local transaction, but make it up on volume? Think they're really worried about reining-in their exchange access costs? AT&T's access costs declined 6.5 percent last year, while their toll rates increased about 3 percent? Are those dreaded access charges really what's worrying them?

Well, we did some modest, back-of-the-envelope calculations. During the last quarter, MCI clocked net profits at the rate of $133,000 an hour. AT&T's profit meter registered $658,000 an hour (and that's the old, unreconstructed AT&T, deflated by the Lucent and NCR losses). Obviously, one can quite economically afford to hire lots of lawyers, economists, lobbyists, and the like to safeguard profits of this magnitude, right?

The real name of the game here, therefore, may well be to secure through regulation what Congress was reluctant to give -- namely, freedom from new actual or potential long-distance competition from firms with genuine staying power. And, a good way of at least slowing the entire process to a crawl is to enlist the Federal regulatory bureaucracy. Play to their biases, stimulate their expansionist proclivities. At best, your regulatory friends will take over everything eventually. And, at worst, things will become ensnarled in endless process and appeals, delaying to the bitter utmost the inevitable bad tidings, right?

The Dröste Deficiency

Yet another discordant harmonic here, however, is a surprising dearth of genuine competition policy sophistication in the FCC's notice -- which suggests the first-rate antitrust professionals now on the agency's payroll didn't play a central role in the document's preparation.

As former Assistant (later Associate) Attorney General Shenefield once noted, the art of good antitrust enforcement is to locate the "button on the Dröste chocolate apple," namely the key pressure point of any monopoly. It isn't necessary to own -- or regulate -- every castle on the Rhine, after all, to police the traffic. Hence, someone skilled in antitrust and competition policy analysis would have surveyed all potential "choke points" here and latched onto the critical piece part -- namely, that element which is key to the competitive puzzle.[1]

What is that key element? Ourselves, we're a bit like the proverbial Perigord pig that's detected a truffle. That is, we don't know the name of the thing that's down there, but we do have this sense it's there. Each and every aspect of local exchange telephony, after all, cannot be equally critical from a competitive analysis standpoint. Thus, the reasonable -- and economical -- competition policymaker would have zeroed in on that, and relinquished first-tier, hands-on control over much else. That the FCC's analysis seems to imply that all aspects are equal, indeed, interdependent, however, would suggest the bias was less toward minimizing intrusion and more toward maximizing regulatory control.

Conclusion

What happens now? That's hard to say, isn't it? The state regulatory world's rife with wets, accommodationists, though it seems likely the FCC's "power grab" -- as some have already described it -- will provoke a shrill response, especially from the West. Who knows, there may be narrowminded people out there, in the land of the "Sagebush Revolution," who really believe that jazz in the Constitution guaranteeing the states a republican form of government, or are inclined to read the Tenth Amendment way too broadly.

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[1] The antitrust professional would also have had some confidence in antitrust principles that govern access to "essential facilities" in virtually all the other parts of the economy.

The document also has one pretty clear bottomline -- that the FCC wants to see local phone bills raised substantially, but would prefer to have state regulators do it. For if all cross-service support is stripped out relentlessly from each and every network component, after all, compensating money will have to derive from somewhere, right? It'll either have to come from the 6 million Americans who own shares in local phone companies, or out of Aunt Minnie's hide, right? Incidentally, it's unclear that setting in motion forces which will almost inevitably lead to "rate rebalancing" (as the industry nicely phrases it) is quite what the President had in mind. Mr. Clinton, remember, was ousted as Governor following a series of Arkansas energy rate "rebalancings" that he supported.

Probably the stronger message being sent to Congress, however, is that the "only way to control this beast is to starve it," as one critic has already said. In passing this new law, Congress obviously envisioned a three-ring circus here: industry negotiations (subject to general antitrust), state commission arbitration and findings, and, finally, FCC blessings of some sort. Under this proposed notice, however, the FCC would be very much like the cuckoo hatchling in the reed warbler's nest. Out would go all the reed warblers's eggs, and, before long, the cuckoo would take over.

Certainly, Congress isn't likely to want to be burdened with whether the FCC should concoct a new incremental cost standard, or meticulously delineate the number of strands allowed in each phone company junction box or vault. (There actually is a vault access discussion in the notice, by the way.) But if Congress gets the sense the agency is ballooning its assigned mission, well, the quickest solution to that challenge is a little sterner fiscal resources diet, correct? So. We'll keep you posted.

* * *

Occasion Subscriber Contribution Memorandum

Re: The Onassis Auction.

Foreword

One of your Review's longtime readers actually viewed the items displayed by Sotheby's prior to last week's spectacular, $34 million auction of some of the personal property of the late Mrs. Jacqueline Kennedy Onassis. Our reader was given an auction catalog, you see, and, consequently, was entered and actually won the attendance lottery. Ever attentive, our reader saw and dutifully reported on the dishes, the artwork, the various knick-knacks -- on everything. And, since the information was interesting -- and everybody else seems to be focusing on this grand media event -- as an added public service, we thought we'd pass some of that information along to readers, too.

Down By the River

Now when Mrs. Onassis died in 1994 following a brief, severe encounter with cancer, her funeral drew media coverage appropriate to the world's most famous woman. She'd performed on the White House stage scarcely more than three years, and departed public life officially while still in her early thirties. Not even Oprah or Princess Di, however, figured so heavily and consistently in the tabloids, or People. Her marriage to the late Mr. Aristotle Onassis, and her Greta Garbo-like reaction to incessant publicity only made her more and more intriguing to the North American (and, to a lesser extent, European and Japanese public).

One of our subscribers described encountering her in a New York coffee shop, where she deliberately positioned herself in the window. So it was never quite clear how consistent the reported obsession with privacy really was. We ourselves saw the lady once, at Dulles Airport, surrounded by a Skycap, an airport bewab, and a very large trunk. She looked pretty private. And, she was smaller than we'd expected (around 5 feet 5 inches), while her modified bouffant hairstyle seemed to accentuate an almost painful thinness. Like the Duchess of Windsor, folks say, "Jackie O" could never be too thin or too rich.

TELECOMMUNICATIONS POLICY REVIEW

Washington, D.C.

Volume 12, Number 19 Our 582d Weekly Issue May 5, 1996

In this Issue:

* Local Competition and How to Do It. If Government errs, it should err on the side of more new construction, jobs, and investment. See pages 1 to 4.

* Texas Meets California. Here is guidance to help those associated with the SBC+PacTel merger transaction. See pages 5 to 7.

* Short Items. Culinary imperialism, plus some funny Presidential jokes. See pages 7 and 8.

* TPR's Weekly General Press Review. General developments, telecommunications developments, and how well newspapers and broadcasters covered them. See pages 9 to 11.

* TPR's Whitewatergate Watch. The past week's events on the corruption, moral bankruptcy, and political shenanigans front -- both here and abroad -- are noted. See pages 11 and 12.

* TPR's Weekly Movie Review. The Pallbearer (91) is discussed. It's a first-tier small movie. See pages 12 and 13.

* Things Worth Remembering. May Day and Marxism are the topic. See page 13.

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Special Review Memorandum

Re: Local Competition and How to Do It.

Forward

Your Telephone Bureau was on-assignment much of this past week. KMB Video Journal -- the "world's only video journal on telecommunications industry policies and practices" -- hosted a large gathering in scenic Florida. Attending were dozens of Federal and state regulators, the usual local and long-distance telephone industry suspects, plus some others, even economists. The topic was how best to orchestrate the local exchange competition discussed in the Federal Communications Commission's recently issued "notice of proposed rulemaking" on the topic (and which your Bureau reviewed last week).

Fundamentally At Issue

Fundamentally at issue was whether Government should foster the development of facilities-based local competition or, instead, aim to "jumpstart" that competition by mandating special, discount resale obligations. Under the new law, you see, local phone companies have to allow other firms to buy bulk capacity and then resell (rebrand) that capacity. That'd allow AT&T, for example, to offer its 80 million customers "one-stop shopping." But the new law also conditions entry of Bell companies into long-distance on the presence of some significant facilities-based local competition. So, unless there's entry, they may be unable to play.

Hence, the choices. If the wholesale rates pressed on local phone companies are too low, facilities-based competition may not materialize quickly (and, perhaps, those phone companies may not be able rapidly to enter long-distance and lose customers who want one, simple source). But if wholesale rates are too high, customers may not see "one-stop shopping" for some time. It may also be too costly for more advanced local exchange facilities to be deployed. AT&T, for instance, has estimated it'd cost some $150 billion to replicate the capabilities of the existing local telephone exchange plant. Here, as in other regulated industries, therefore, Government has the ability to control entry -- and the prospect of competition -- by quietly manipulating price levels. And, what the Government chooses to do, of course, will hinge, in part, on what the Federal and state bureaucracy perceives to be the most likely course of technology and communications service markets.

In An Ideal World

Now, in an ideal world, Federal and state regulators would simply opt for Senator Aiken's sage advice: Declare victory and withdraw. There aren't a lot of erstwhile regulated industries which are more apt candidates for prompt and total "Vietnamization," after all. Anyone who seriously harbors the delusion that MCI risks destruction tomorrow from an "unleashed" local Bell company, for instance, probably just fears too much. All of that long-distance traffic which MCI derives from and delivers to local exchange companies, after all, is a very substantial source of revenue and profit for those local companies. In aggregate, remember, the long-distance companies generate some $14 billion a year in interstate "access charges" alone for the local companies. Access charges are thus a source of substantial earnings for which relatively little added effort or commercial risk are entailed.

And, AT&T? The company already has substantial local exchange facilities, left over from Bell System days and expanded to accommodate its massive toll traffic. AT&T could probably not extend its network tomorrow to the 80 percent of its customers who account for 20 percent of its profits. But one expects that without a great deal of heartburn, it could link up with the 20 percent which account for 80 percent of profits. Long-distance calling, after all, is both demographically and geographically quite concentrated. "Alternative access providers" -- also known as "competitive access providers" (CAPs) or "competitive local exchange carriers" (C-LECs) -- reach an amazing number of potential toll revenue dollars with surprisingly few strand miles of high-capacity fiber optic cable plant. If Metropolitan Fiber (with, now, UUNet) can do it, presumably AT&T retains that capability.

Usually, if not always, when large, multibillion dollar companies plead for the Government to give them special help and protection, one should pat one's wallet or check

one's purse. All of the companies in the telecommunications business, after all, have some substantial advantages. Even the wee little small companies, moreover, have the advantage of great resiliency and proven marketing and customer service talent. "Unleashing" Citibank has not resulted in the demise of every small bank in the country, after all, nor has it driven its hapless regional rivals into receivership -- at least not the last time we checked. Why would that happen here?

A Few Minor Ideological Points

Industrial "Vietnamization" also has some significant support in the literature of free-enterprise capitalism, too, irrelevant as that may seem to the current "industrial policy-making" exercise. The best indicator of the competitiveness of a given market, remember, is the incidence of firm failure, not success. It's only in pervasively regulated fields where the Government maintains a firm thumb (or foot) on the scale that "Dodo Race" conditions relentlessly prevail -- that is, where everyone wins and all receive prizes. In a free-enterprise economy, too, the principal justification for a regime of unconstrained private profits is assumption of commercial risk. If companies want Government to spare them from all possible marketplace risks, therefore, they can hardly be heard to complain when Government directly, or through regulation, chooses to intervene to recapture a chunk of their profits, right?

Choices vs. Pipe Dreams

But the function of public policymakers, as Mr. Jean-François Revel's pointed out, is to choose between real options, and not to juxtapose realities with pipe dreams. There's a place for programmatic elegance -- espousing views less with an eye toward their attainability than their laudability, and especially the laud that will inure to the proponent from the already converted. Look at academia, for heaven's sake. In the trenches of telecommunications policymaking, however, industrial Vietnamization isn't really an option, is it? It's a bit like advocating vegetarianism while touring a Montfort Beef packing plant, right? Among other things, it's mandated legislatively.

So, assuming that choices must be made by someone in Government -- and fairly soon -- what then should public policymakers bear in mind? Here are a few general rules-of-thumb.

1. Facilities are always better. First, and with all due deference, the considered opinion of the world-class economists in Japan and Germany who've looked at these matters seems to be that facilities-based competition is always better than just resale. Their argument is that resale forestalls genuine cost comparisons, and also tends to lock an industry into a given set of technologies -- namely, those chosen by the dominant, facilities provider. And, we look at it this way: Germany and Japan have an enormous trade surplus with the United States, and have for years. So, whatever it is economists do, the Japanese and German economists are doing it better. If one must pay attention to the dismal science, therefore, one should focus on what the winners's economists are saying, right?

2. Forecasts here are always wrong. Second, and with all due deference to the American regulatory establishment, when it comes to forecasting what's going to happen in telecommunications, they always seem to get it wrong. Regulatory forecasting, in the immortal words of President Carter after the botched Iranian hostage rescue mission, has proven an "incomplete success."

In 1969-70, for instance, there was a comprehensive study undertaken into domestic communications satellite prospects. Your Government concluded there would be relatively modest demand, because the Bell System's terrestrial network was so developed and sophisticated. At no point in that study, moreover, was there any mention of cable television and the potential transmission demand that industry represented. The Government also, by the way, said that one didn't have to worry about orbital slots, because there would almost certainly be an abundance for years to come. Right. In ten years, the skies were dark with fleets of satellites wheeling cable TV programming across the world and dozens of firms were squabbling over orbital slots.

Moving right along, your Government and the old Bell System forecast three to four million cellular radiotelephone subscribers by the turn of the century. Who, after all, wanted a portable phone when we have all these good pay telephones, right? The Government persisted in its challenges to IBM until the firm nearly slipped into receivership -- indeed, as late as 1994 the Antitrust Division was paradoxically suing Microsoft and opposing changes in a 1956 IBM consent decree designed to ensure competitive safety in the punch-card market.

From 1968 through 1978, the FCC steadfastly sought to suppress cable television, on the ground it would only serve the rich and famous. No one in the Government noticed the advent of the VCR and the video tape rental business -- a minor $14 billion a year enterprise. Facsimile machines materialized and came to account for some 25 percent of long-distance business telephone traffic. The Internet didn't register on the regulatory radar screen until a few Senators -- astounded to discover there were actually computers -- uncovered adult "chat lines" and other "cyberporn" challenges.

Remember, when it comes to forecasting demand for very basic products (including basic communications), that's not so hard. Peoples's needs are remarkably similar and unchanging -- for basic food, housing, clothing, etc. -- and reliable forecasts can be readily generated via demographics. But when it comes to estimating what people might like or wish to have, especially in technologically energetic markets, the Government's unfortunately a dismal failure. (In Fairness, some would say "fortunately," since if it knew what was going to happen, heaven know's what it might do.)

3. Overlay networks already exists. Third, and again with all due deference to AT&T and its forecasts -- from the same management that brought you NCR, now, new forecasts, right? -- there actually exist several "overlay" networks in the United States. The most expansive (and lowest-cost) "broadband" distribution network which we have is called "free, over-the-air television." Using about $25 billion worth of capital plant, the broadcasters actually manage to deliver a 6-MHz broadband signal to every house in the country. Imagine that! Right now, it's analog and one-way. But they're at least contemplating installation of a digital over-the-air broadband network -- and it costs a heck of a lot less to do that than to string nonmetallic wires and cables, be assured.

We have carpeted the country with satellite signals, which are already digital and broadband. Two million direct-broadcast satellite subscribers may not seem like many. But why do you think both MCI and AT&T and getting into that business? Could they be seeing possible data and voice applications? We have 80+ percent of the country blanketed by cellular radiotelephone signals. Supposedly, when those analog signals are digitized, the result is to create a six-to-one channel increase. Additionally, we have the Korean dry-cleaning monopoly rapidly expanding into wireless personal communications services (PCS).

Perhaps the biggest -- or, at least, most obvious -- overlay network is the cable television industry. They claim to pass some 96 percent of households, and 67 million subscribe. At least half the systems are more than 50-channel. We don't know what one has to do to convert cable systems into telephone networks, but suspect that with today's computers and software it's not a show-stopping proposition. We also expect the capital requirements wouldn't bring the telecommunications industry to its knees. Three years ago, the Wall Street Journal estimated the cost at about $40 billion -- a lot of money, but less than one-third what AT&T has declared it would cost.

And, it's perhaps naive to think that none of these overlay systems can or will be optimal for standard voice telephony. Because, at the rate services like Internet-based "voice E-mail" and the like are growing, is plain old telephone service as we all know it always going to be king of the telecommunications mountain? That's certainly the prevailing regulatory view (which should send up one red flag, see No. 2, above). It's also the stated view of AT&T's current management -- exactly the same folks who 12 years ago decided Western Electric was worth all the Bell companies, bought NCR, spun off cellular as a loser,

and have kept in office a fellow who literally loses over $400,000 an hour! (As Mr. Groucho Marx put it, "Who are you going to believe? Me, or your own two eyes?")

4. State-directed "predatory pricing" isn't good. Ordering companies with acknowledged "market power" to price on the very incremental cost basis which AT&T and others have suggested -- but only for local firms -- is tantamount to directing them to monopolize the local exchange facilities business, isn't it? For while U.S. economists differ on the least-inaccurate measure of predatory pricing -- Joskow-Klavorick vs. Baumol-Willig, etc. -- one expects they'd agree on the "forward-looking total service long-run incremental cost" approach. If AT&T has no real intent to enter the local exchange facilities business, then obviously it has no problems with the local phone companies relentlessly monopolizing the field and making other companies's commercial prospects dim.

But the country's likely to be best served over time by policies which foster more construction, more jobs-creation, more and faster deployment of better, "juicier" technologies, right? Figuratively speaking, doesn't the American public deserve more true choice, not just an echo? Of course. So, if there're risks to be avoided here, the primary thing is for Government not to do anything which might harm the deployment of advanced communications facilities, right?

Conclusion

Assuming the regulators are going tc tilt the playing field, therefore -- and because Congress told them to do it -- they should elevate to the highest level the need to foster new facilities-based communications networks. Granted, there's passing merit in the FCC (and others's) current biases. They see forcing phone companies to offer capacity at the lowest possible price as maximizing "consumer surplus" (assuming those relentless long-distance market competitive forces compel a perfect pass-through of local access savings -- something which MCI but not AT&T has publicly pledged to do). The FCC's bias would thus maximize the money flowing into consumers's pockets, at least in theory, and those consumers would be free to spend the money how they, not Government chooses.

But if Government's not willing to trust part of the marketplace -- the suppliers -- to make the right decisions, why should it assume the other part -- the customers -- will choose correctly? They just might take their money and buy, say, another topping on a pizza -- good for them, but not that good in terms of the long-run interests of the country.

As a general rule of thumb, if one's compelled by Congress to engage in industrial policymaking, to pick winners and losers, one should just do it. Don't pussyfoot around, don't try and dress-up one's ideologically meretricious undertaking. For a half-loaf, accommodationist approach toward competition or dirigism is almost guaranteed to produce half-loaf results, right? At least if one pursues industrial policy sternly, the chances for success are higher. (And, to those who say "industrial policy" doesn't work -- well, would you like us to tell you about how babies are found under gooseberry bushes? Have they looked at the performance of our principal trade rivals recently?)

When the President, Vice President, and Congressional leadership gathered in the Library of Congress on February 8, 1996, to sign the new communications act into law, one expects that visions of new investment, construction, jobs, and advanced technology were dancing in their collective heads. Now is the time for all the regulators to fulfill their part of that bargain, and to see how they can foster more facilities-based local competition through manipulation of pricing and other economic signals, right? That's what we need to "jumpstart" the American economy, and the regulatory process can play a role. So.

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